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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,683	11/24/2003	Francis Pruche	05725.1256-00	3211
22852	7590	05/12/2009		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
VENKAT, JYOTHSNA A				
ART UNIT		PAPER NUMBER		
1619				
MAIL DATE		DELIVERY MODE		
05/12/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,683

Applicant(s)

PRUCHE ET AL.

Examiner

JYOTHSNA A. VENKAT

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55, 57, 66, 68 and 69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55, 57, 66, 68 and 69 is/are rejected.
- 7) ☒ Claim(s) 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of amendment, remarks and certified translated copy of foreign priority document filed on 2/17/09.

Status of claims

Claims 58-65 and 67 are withdrawn from consideration as being drawn to non-elected invention. Claims 1-57, 66 and 68-69 are examined in the application.

Priority

In view of certified translation of provisional application, applicants' are accorded benefit under 119 (c).

The following new ground of rejection is necessitated by the amendment.

Claim Rejections - 35 USC § 103

Claims 1-55, 57, 66 and 68-69 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of WO 02/30375 ('375) and U. S. Patent 4,226,784 ('784).

U. S. Patent 6,953,486 is the English equivalent for WO 02/30375. Examiner is relying on the disclosure of the patent.

Patent '486 teaches dyeing compositions also known as coloring compositions for coloring the keratin (skin or hair). See the abstract. Patent '486 teaches coloring using dye precursor at col.3, line 56 to col.4, line 25 and the claimed catalytic system at col.2, line 51 to col.col.3, line 55. Patent at col.5, ll 36-48 teaches plant extracts claimed in claims 20-21. Patent at col.6, ll 53-68 teaches physiologically acceptable medium claimed in claims 25-28 and teaches the weight percent at col.7, ll 7-11 (claims 29-31). Patent at col.8, ll 23-42 teaches that the composition can be packed in two discrete containers or it can be packed in a single

compartment. See the examples and see also claims. The difference between the WO document and instant application is WO document does not teach composition also having an acidic composition or basic composition. However, patent '784 teaches coloring hair using acidic composition. Patent '784 at col.2, ll 20-25 teaches adjusting the pH from 4-10 by adding organic or inorganic acids in coloring compositions. the value of pH above 7 is basic. See example VIII. This composition is a coloring composition and it has citric acid (acidic composition). Patent under example IX teaches coloring compositions having a base. This corresponds to basic compositions. Thus patent teaches acidic compositions or basic compositions.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare a third hair coloring composition by combining hair coloring composition of WO document and add to the compositions an acidic composition or basic composition of patent '784. It is prima facie obvious to combine two compositions which have been used individually for the same purpose since the idea of combining the ingredients flows logically from the art. This is a prima facie case of obviousness.

Allowable Subject Matter

Claim 56 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

This application contains claims 58-65 and 67 drawn to an invention nonelected with traverse in the reply filed on 5/9/07. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619